

Page 1

Vol.
Pages 1 - 156
Exhibits 1 - 8

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
NO. 04-11836RCL

TRANS-SPEC TRUCK SERVICE, INC.
d/b/a TRUCK SERVICE,
Plaintiff

vs.

CATERPILLAR, INC.,
Defendant

AUDIO-VISUAL DEPOSITION OF RALPH A. LIND, JR., a witness called by and on behalf of the Defendant, pursuant to the provisions of the Federal Rules of Civil Procedure, before Heather S. Cruz, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Campbell, Campbell, Edwards and Conroy, One Constitution Plaza, Boston, Massachusetts, on Tuesday, May 10, 2005, commencing at 9:37 a.m.

C.J. REPORTING
AS Colonial Drive, Unit No. 7
Andover, Massachusetts 01810
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www.cjreporting.com

Page 4

PROCEEDINGS

THE VIDEOGRAPHER: We are now on the record.
The date is May 10, 2005. The time is approximately 9:37 a.m.

We are located at the offices of Campbell, Campbell, Edwards and Conroy in Boston, Massachusetts. The Defendant in the case of Trans-Spec Truck Services, Incorporated, d/b/a Truck Service versus Caterpillar, Incorporated, Civil Action No. 0411836 RCL.

We will now take the audio-visual deposition of Mr. Ralph Lind. My name is William Barton of In Court Technologies, Boston, Massachusetts, and I am the videographer for this deposition. The stenographer is Heather Cruz of C.J. Reporting.

At this time the attorneys will introduce themselves for the record.

MR. GRUNERT: My name is John Grunert with the firm of Campbell, Campbell, Edwards and Conroy. I represent the Defendant, Caterpillar, Inc.

MR. SAMITO: Christian G. Samito of Donovan Hatem, LLP. I represent the deponent, Mr. Lind, and the Plaintiff, Trans-Spec Truck Service.

THE VIDEOGRAPHER: The stenographer will now swear in the witness.

Page 2

1 APPEARANCES:

2 DONOVAN HATEM, LLP
3 By Christian G. Samito, Esquire
4 Two Seaport Lane
5 Boston, Massachusetts 02210
6 On behalf of the Plaintiff
7 CAMPBELL, CAMPBELL, EDWARDS & CONROY
8 By John A.K. Grunert, Esquire
9 One Constitution Plaza
10 Boston, Massachusetts 02129
11 On behalf of the Defendant
12 Also Present: William Barton, Videographer
13 In Court Technologies
14 One Constitution Plaza
15 Boston, Massachusetts 02129

16 Also Present: Joseph Howard

Page 5

RALPH A. LIND, JR., having been satisfactorily identified by a Massachusetts driver's license and duly sworn by the Notary Public, was examined and testified as follows:

MR. GRUNERT: The parties have agreed that we're going to have the usual stipulations, except that the witness is going to read and sign the transcript. So objections except to the form of the question are reserved until the time of trial. Motions to strike are reserved until the time of trial. Notarization of the witness' signature is waived.

EXAMINATION BY MR. GRUNERT:

Q State your full name, please, sir.

A Ralph Andrew Lind, Junior.

Q Have you had your deposition taken before?

A I don't know. I don't think so. Not for this, but.

Q Have you had the misfortune on any earlier occasion to sit in a room like this with a stenographer and have attorneys question you under oath and have your testimony taken down stenographically?

A Yes.

Q What was the occasion for that?

A I don't remember.

Q Was it --

Page 3

INDEX
DEPOSITION OF RALPH A. LIND, JR.

	Page
Examination by Mr. Grunert	4, 139
Examination by Mr. Samito	113

EXHIBITS

Nos.	For I.D.
1 Driver's Vehicle Inspection Report dated 10/17/03	25
2 Repair Order and Invoice dated 6/3/03	28
3 Preventive Maintenance Inspection Report dated 1/27/03	28
4 A Service Sheet dated 9/18/03	29
5 B Service Sheet dated 3/07/03	30
6 Invoice No. 65992	74
7 Invoice No. 98663	87
8 Invoice No. 88088	87

Page 6

A It was something to do with a driver a long time ago for Truck Service.

Q This was a case in which you were not a plaintiff or a defendant, you were a witness testifying in a case that somebody else had brought?

A Yes.

Q Do you remember who the plaintiff in that case was?

A No.

Q Do you remember who it was who took your deposition?

A No.

Q Were you represented by an attorney at that deposition?

A I don't remember. It was years ago.

Q What's your address?

A 2 Mason Road, Milbury, Mass.

Q Are you married?

A Yes.

Q Children?

A Yes.

Q Are you employed?

A Yes.

Q Who is your employer?

A London Taxis of North America.

Q When you go to work in the morning, where do you go?

A Sudbury, Massachusetts.

EXHIBIT

abbles

Page 61

1 serviceability. How easy was it to work on the truck.
 2 Because the truck is down for as long as it needs to be
 3 serviced. So the faster you can get it fixed and back
 4 on the road or serviced and back on the road is what I
 5 was concerned with.
 6 **Q Okay. Were there particular characteristics of these**
 7 **trucks that you were concerned with from a perspective**
 8 **of serviceability? Were there particular features that**
 9 **you told Mr. Medbery you needed on these trucks in**
 10 **order to make them adequately serviceable for what you**
 11 **knew Trans-Spec's needs were?**
 12 A As far as features, no. Component locations, yes.
 13 **Q Okay. And were there specific components that you were**
 14 **concerned about?**
 15 A Yes.
 16 **Q Which specific components were you concerned about?**
 17 A Battery location. Battery and cable location. Air
 18 drier. Fuel filter location. Basically all the
 19 service needs. Everything that required a basic which
 20 on the A Service Sheets. Every component that had to
 21 be checked on and serviced, I was concerned with where
 22 it was located and its accessibility to a technician.
 23 My specifications weren't based on that sheet
 24 you got in your hand.

Page 62

1 **Q Were there some power take-offs? How many power**
 2 **take-offs from the transmission on these trucks were**
 3 **there?**
 4 A Depended on the truck.
 5 **Q So on these 22 Sterling trucks, some of them had more**
 6 **power take-offs than others?**
 7 A Some had two, some only had one.
 8 **Q Do you know why some had two while some only had one?**
 9 A Because some trucks did multiple duties. They worked
 10 on dump trailer and tanker.
 11 **Q So the ones that had tanker plus dump trailer had two**
 12 **power take-offs?**
 13 A Yes.
 14 **Q Do you remember which trucks it was that had two power**
 15 **take-offs?**
 16 A No.
 17 **Q Do you remember how many of the trucks were used for**
 18 **those dual purposes as distinct from just delivering**
 19 **fuel?**
 20 A No.
 21 **Q The trucks that were equipped to handle a dump trailer,**
 22 **do you know about how much of their time was spent**
 23 **hauling aggregate or other material in a dump trailer**
 24 **as contrasted with hauling fuel?**

Page 63

1 A No, I don't. I didn't dispatch the trucks so I didn't
 2 know what they were doing.
 3 **Q Were the trucks that were equipped to handle a dump**
 4 **trailer used for that purpose more during the warm**
 5 **months than during the winter months?**
 6 A Yes.
 7 **Q Were they used for that purpose principally during the**
 8 **warm months?**
 9 A Dump trailer, yes. Mostly in the summer.
 10 **Q Okay. My question was pretty unclear. The trucks that**
 11 **were equipped to handle a dump trailer, during the**
 12 **summer months, was hauling aggregate and other material**
 13 **in a dump trailer what they were mostly used for during**
 14 **the summer?**
 15 A Yes.
 16 **Q And then during the winter months they would be**
 17 **switched over to fuel delivery?**
 18 A To tanker. Yes.
 19 **Q You mentioned early on when we were talking about the**
 20 **documents that you prepared, you mentioned weight slips**
 21 **or overweight slips?**
 22 A Yes.
 23 **Q And I take it that you also filled out other paperwork**
 24 **for various types of permits that were necessary for**

Page 64

1 **hauling?**
 2 A Fire marshal permits. Numerous permits, yes.
 3 **Q Where were -- where would those types of documents be**
 4 **kept at Trans-Spec?**
 5 A Copies of them were in my desk or in my filing cabinet
 6 in my office. And the original was kept with the
 7 truck. Or a copy was with the truck and one was kept
 8 at the registry or whoever issued the permit; fire
 9 department, registry, so on.
 10 **Q As the years passed, would those various permits and**
 11 **slips of various types, documents, would they be stored**
 12 **somewhere at Trans-Spec?**
 13 A I think I only kept them for a year. Because I would
 14 copy them over for the next year and make any changes I
 15 needed to be done and then throw the other ones away.
 16 **Q So as they expired?**
 17 A Threw them away.
 18 **Q You just dump them?**
 19 A Yes. Dump the ones in the truck. I don't know if I
 20 actually got rid of the ones that I had in my office.
 21 **Q Okay. When Trans-Spec's trucks were hauling aggregate**
 22 **or asphalt or various materials that were hauled in the**
 23 **dump trailers, would scale tickets be generated in**
 24 **order to determine how much material had been**

Page 65

1 **delivered?**
 2 A Scale tickets you mean I generate?
 3 **Q No. No. I assume that the trucks --**
 4 **Getting back into the documents the driver had. No. I**
 5 **don't know what the driver had for documents other than**
 6 **the driver's inspection report.**
 7 **Q Okay.**
 8 A I could guess, yes, but because I've seen scale houses
 9 at different locations, but I've never dealt with the
 10 scale tickets.
 11 **Q Getting back to the process of specing the Sterling**
 12 **trucks that were involved in this case. Did you have**
 13 **any discussions particularly with Mr. Medbery**
 14 **concerning the C-12 engines?**
 15 A I don't think so. I don't know. Maybe as far as
 16 serviceability. But I don't remember a specific
 17 conversation.
 18 **Q Did you have any conversations with him concerning the**
 19 **fly wheels or the fly wheel housings?**
 20 A Not that I know of.
 21 **Q In connection with the process of specing these trucks,**
 22 **did you have any conversations with Mr. Calderbank?**
 23 A Only as far as my recollection of Boca Raton. I don't
 24 remember any specific conversations I had with him.

Page 66

1 **Q In connection with specing the Sterling trucks involved**
 2 **in this case, did you have any conversations with**
 3 **Mr. Cardoza from Southworth-Milton?**
 4 A Some conversations I believe.
 5 **Q What conversations did you have with Mr. Cardoza in**
 6 **connection with specing these trucks?**
 7 A I don't know if it was actually in specing the trucks,
 8 more as it was the ability of the engine as far as
 9 horsepower and torque ratings.
 10 **Q Tell me what you remember about the conversation or**
 11 **conversations you had with Mr. Cardoza in connection**
 12 **with these Sterling trucks.**
 13 A I don't really remember specific conversations. I know
 14 we talked about the engines. Their ability. The
 15 horsepower ratings. The torque ratings. What they
 16 were suppose to be able to do. I don't remember the
 17 actual conversations.
 18 **Q Other than the torque ratings and the horsepower**
 19 **ratings, what do you remember Mr. Cardoza telling you**
 20 **about what the engines were suppose to be able to do?**
 21 A I don't. I don't remember.
 22 **Q So what you remember of getting from him is torque**
 23 **ratings, horsepower?**
 24 A Uh-huh. Yes.

Page 67

1 **Q And you remember that you talked with him about other**
2 **things, but you simply don't recall what was said?**
3 A Correct. I talked to Al a lot and about many different
4 things, and I can't remember what we talked about.
5 **Q Did you talk with anyone other than Mr. Cardoza from**
6 **Southworth-Milton during the process of specing out the**
7 **Sterling trucks?**
8 A No.
9 **Q Did you talk with anyone from Caterpillar in the**
10 **process of specing out these trucks?**
11 A Not that I remember. No.
12 **Q What discussions do you remember having with Mr. Howard**
13 **in the process of specing out these trucks?**
14 A We talked a lot about the trucks and what he thought.
15 These trucks were suppose to be the last truck, the
16 right truck for our job. And we spent a lot of hours
17 talking about many things. Drive shafts and rear
18 axils. The engine in particular. We thought it was
19 the right engine. The cab design. The doors.
20 Mirrors. Everything. We talked about a lot of things.
21 Cruise control.
22 **Q When you spoke -- when you spoke with him about the**
23 **rear axil, what was the discussion on that subject?**
24 A Well, we had Rockwell rear axils in our Freightliners

Page 68

1 which were an all-wheel drive. They had an inter-axil
2 lock and we decided -- he decided that to go with an
3 anti-lock braking traction control system or something
4 to that effect, and it was a simple conversation as to
5 eliminating the axil lock on the Sterlings because we
6 saw what kind of damage they could do in the
7 Freightliners when the driver didn't know how to use
8 it. So specifically. And stuff like that.
9 **Q What do you remember talking with him about so far as**
10 **the drive line was concerned?**
11 A I know he chose to go with a Spicer. I believe a
12 Spicer drive line over the Rockwell drive line or the
13 Meritore drive line because of Merko Bigward's
14 recommendations.
15 **Q Because of?**
16 A Merko Bigward. A Meritore rep. He didn't recommend
17 his drive line. He recommended actually his
18 competitor.
19 **Q And the person's name is Merko Bigward?**
20 A Yes.
21 **Q Is Merko Bigward the person that Jay Howard dealt with**
22 **in connection with choosing a Meritore transmission?**
23 A Possibly.
24 **Q Do you know where Mr. Bigward operates out of?**

Page 69

1 A No. I don't think he's our rep anymore in
2 Massachusetts.
3 **Q Did you accompany Mr. Howard to a meeting up in Saint**
4 **Thomas, Ontario concerning these trucks?**
5 A Yes, I did.
6 **Q Is that the only meeting that you attended with**
7 **Sterling representatives in connection with specing**
8 **these trucks?**
9 A The only meeting. I believe it is. I don't remember
10 any others.
11 **Q Apart from that meeting, did you talk with any people**
12 **from Sterling concerning these trucks during the**
13 **process of specing them?**
14 A Other than Don Medbery?
15 **Q Don Medbery works for Minuteman, right?**
16 A Sterling. Not that I'm aware of.
17 **Q How long did you spend in Ontario with Sterling?**
18 A I believe we were there two days. I'm not 100 percent
19 sure.
20 **Q Was anyone from Southworth at that meeting?**
21 A I don't remember.
22 **Q Was anyone from Caterpillar at that meeting?**
23 A I don't remember. I remember me, Jay, Don Medbery and
24 I believe Dick Witcher.

Page 70

1 **Q Dick Witcher.**
2 A Minuteman Trucks.
3 **Q Do you remember who was there from Sterling?**
4 A I don't know his name. I could picture the guy but I
5 don't know his name.
6 **Q Did you make any notes at that meeting?**
7 A No, sir.
8 **Q What was the purpose of that meeting?**
9 A We were going to see the truck come off the line and
10 make any changes at the end of the line that we thought
11 would benefit serviceability of the vehicle.
12 **Q So you actually saw a truck that met the specifications**
13 **that Trans-Spec had given Sterling, you actually saw a**
14 **truck of that type fully assembled?**
15 A We saw a truck that they thought would meet our
16 specifications. I believe it was one of our trucks.
17 **Q And did you inspect it after it came off the end of the**
18 **assembly line?**
19 A Yes.
20 **Q Did you have any changes that you requested?**
21 A Yes.
22 **Q What changes did you request?**
23 A Air drier location. That I remember specifically. I
24 believe battery location and battery cable length.

Page 71

1 Keep going back to those because I remember those
2 specifically were one of my complaints.
3 **Q Were there any other changes that were requested either**
4 **by you or by Mr. Howard?**
5 A I don't remember any others.
6 **Q Were there any particular features of the trucks that**
7 **Trans-Spec had ordered that were discussed at that**
8 **meeting other than the air drier location and the**
9 **battery location and the battery cable length?**
10 A I don't remember.
11 **Q Was there any discussion of the engine?**
12 A Not that I can remember. No.
13 **Q Was there any discussion about the transmission?**
14 A Again, not that I can remember.
15 **Q Was there any discussion of the design of the frame?**
16 A I don't know. Might have been. See, I was more
17 concerned with the serviceability of the vehicle. I
18 don't know what he talked about. I didn't discuss with
19 anybody anything other than the serviceability of the
20 truck and what I thought would make it easier for me to
21 service. You're getting into components, and I wasn't
22 involved in the components per se.
23 **Q There was no discussion of fly wheels or fly wheel**
24 **housing, I assume?**

Page 72

1 A Not by me.
2 **Q Not that you remember?**
3 A Correct.
4 MR. GRUNERT: I'm going to show him this
5 document.
6 MR. SAMITO: Is it in this packet that you
7 gave me?
8 MR. GRUNERT: Yes, it is.
9 MR. SAMITO: Do you know where, so I could
10 follow along?
11 MR. GRUNERT: Probably right on top.
12 MR. SAMITO: Okay.
13 THE VIDEOGRAPHER: Could I change tapes at
14 this time?
15 MR. GRUNERT: Sure. This is a good time.
16 THE VIDEOGRAPHER: The time is approximately
17 11:28. We are off the record for a tape change.
18 (Off the record.)
19 THE VIDEOGRAPHER: We are on the record. The
20 time is approximately 11:29.
21 **Q Mr. Lind, let me show you a sample document from a**
22 **mound of documents that I recently obtained from**
23 **Minuteman Trucks.**
24 **As a result of your work at Minuteman Trucks,**

Page 121

1 I don't remember, I didn't know that was dropped off by
2 Colony, but we did have a truck dropped off that we
3 examined and I went over that truck.
4 **Q Do you remember -- you don't remember who dropped it**
5 **off?**
6 A I don't.
7 **Q But an AT-9513 was dropped off at some point?**
8 A Yes.
9 **Q And you examined it?**
10 A Yes, I did.
11 **Q What did you think of it?**
12 A I thought it was a nice truck, one that we could use.
13 **Q Do you remember what kind of engine it had?**
14 A It had a -- I think it had a C-12 in it.
15 **Q Did you examine the engine?**
16 A Yes, I did.
17 **Q What did you think?**
18 A I thought it was, again, I thought it was the right
19 engine. It looked like -- that truck looked like
20 something we could work with. It would do what we
21 wanted.
22 **Q Did you have any complaints about the engine or the**
23 **AT-9513 that you examined?**
24 A Minor cosmetics and component locations like I stated

Page 122

1 earlier in the -- where some things were located on the
2 truck I didn't particularly care for. Air driers, oil
3 filters, the battery box locations. But as far as the
4 layout of the truck, I thought it was good.
5 **Q Who is Don Medbery?**
6 A I believe he's a salesman -- he was a salesman for
7 Minuteman Trucks.
8 **Q When did you first meet Mr. Medbery?**
9 A Sometime during the specing, potential purchasing of
10 the Sterlings.
11 **Q Did he speak to you or?**
12 A I spoke to Don quite a few times. I've even been to
13 his house and worked on some of his computers, so.
14 **Q What did Mr. Medbery tell you specifically regarding**
15 **Trans-Spec's truck purchase, outside of the computer**
16 **conversations, but focused on the truck purchase?**
17 A I only remember him saying he was the salesman for
18 Minuteman Trucks and he was potentially selling the
19 trucks to us. And he basically stopped by our lot for
20 just to let us know he was still around and -- I don't
21 remember a lot of the conversations I had with him. I
22 basically tried to avoid him.
23 **Q Did Al Cardoza make any representations concerning the**
24 **suitability of the C-12 for Trans-Spec's business**

Page 123

1 **applications?**
2 A Al Cardoza, yes.
3 **Q What were those representations?**
4 A As far as the C-12s, he had computer programs that
5 showed printouts of what the engine was capable of
6 doing. He could do drivability chart or graph of the
7 way that the engine would perform in certain
8 conditions.
9 **Q Was it a Caterpillar specing program that he used?**
10 A I believe it was something like that. I don't know
11 exactly.
12 **Q And did he show you printouts?**
13 A Yes.
14 **Q Did you view the printouts?**
15 A Yes.
16 **Q Did you see him input the data?**
17 A Yes. We tried -- he was in my office with the laptop
18 on numerous occasions changing transmission final drive
19 ratios, rear axle ratios, imputing different data to
20 come up with different startability of the trucks, how
21 it would take off from a dead stop with a load and
22 certain road conditions. Degraded the road and stuff
23 like that.
24 **Q Did he show you based on that program that the C-12 was**

Page 124

1 **suitable for Trans-Spec's business purposes?**
2 MR. GRUNERT: Object to the form.
3 **Q You can answer.**
4 A Yes.
5 **Q Did Mr. Cardoza show you that the C-12 was suitable for**
6 **80,000 gross commercial weight vehicles in New England?**
7 A 80,000 vehicles?
8 **Q 80,000 gross commercial weight vehicle.**
9 A The gross commercial weight rating, yes.
10 **Q What did Al Cardoza say about serviceability of the**
11 **trucks?**
12 A I don't remember talking to him about serviceability.
13 I knew how to service a truck, so I didn't really talk
14 to him about stuff like that.
15 **Q Well, you said earlier that that was one of the main**
16 **concerns that you had in terms of serviceability of the**
17 **engines. Did you discuss that at all with Al Cardoza?**
18 A No.
19 **Q You didn't. Okay. Do you recall what sort of data the**
20 **documents showed?**
21 A The computer printouts. It was a graph type document
22 that printed out -- had line graphs that would show --
23 on one side it had horsepower ratings and then grades
24 of the road and then the line would go -- it was just a

Page 125

1 basic graph that showed you how the truck would react
2 to certain conditions. Or the engine, not the truck.
3 **Q How long did you spend with Mr. Cardoza plugging in**
4 **these various conditions?**
5 A In total, I have no idea.
6 **Q Did it happen at one meeting or was it --**
7 A No. No. No. It was done it a few times. When Jay --
8 when Al would print something out, I would tell Jay --
9 what Al come up with and he would try different final
10 drive ratios, transmissions. We were also going for
11 fuel mileage, so axle ratios meant a lot. How the
12 truck would take off with a load, but it also had to
13 get to the right road speed. So it was a lot of
14 variables.
15 **Q Earlier you spoke about a trip to Canada and an**
16 **examination of the Sterling factory when the trucks**
17 **were being built. Did you meet any Caterpillar**
18 **employees during that visit?**
19 A I don't remember a CAT employee.
20 **Q Okay. I would like to show you a document to mark.**
21 MR. SAMITO: I'll show it to you. I don't
22 have another copy of that.
23 MR. GRUNERT: I've got the original. Do you
24 want to just refer to the deposition --

Page 126

1 MR. SAMITO: We can. Yeah. From -- I assume
2 that you had it.
3 MR. GRUNERT: Rather than mark it.
4 MR. SAMITO: That would be fine if we use
5 that.
6 MR. GRUNERT: This is an exhibit that --
7 actually several exhibits that were marked at the first
8 day of Mr. Howard's deposition.
9 THE WITNESS: Okay. Yes.
10 **Q If you could turn to the -- you'll see that the -- it's**
11 **marked Exhibit 4 Howard deposition. The first page is**
12 **a cover letter from me to Attorney Howe. If you look**
13 **at the third page. Do you recognize this document?**
14 A Yes.
15 **Q What is this document?**
16 A It's an extended -- it's a warranty basically.
17 Extended service coverage warranty document.
18 **Q When did you first see this document?**
19 A As far as the date, I don't remember when I saw it.
20 **Q But have you seen it before today?**
21 A Yeah. I signed it.
22 **Q Where did you sign it?**
23 A Down on the lower left-hand corner. That is my
24 signature.